

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): James T. Richardson, Jr.

Assignee: THE BOEING COMPANY

Title: Intelligent Email Services

Serial No.: 10/771,052 Filing Date: February 2, 2004

Examiner: Van Kim T. Nguyen Group Art Unit: 2456

Docket No.: 70186.12 (M-15345 US) Confirmation No.: 1520

Irvine, California
November 10, 2010

Mail Stop Appeal
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Dear Sir:

Please enter the following request for pre-appeal brief review in response to the final office action dated August 13, 2010.

REMARKS

Applicant respectfully submits this pre-appeal brief request for review in light of the following clear legal error in the October 26, 2009 final office action.

The Petry reference (USP 6,941,348) can never detect whether a sending email server has failed

Although this matter is now on a 3rd final office action, Applicant identified the fundamental flaw in Petry in the response filed February 25, 2009. Specifically, Applicant argued as follows:

Applicants respectfully note that the claimed subject matter is directed to an intranet server with a mail facility. Petry does not disclose or suggest an intranet whatsoever, let alone an intranet server with a mail facility. This is rather fundamental difference because Petry is directed to the management of email transmission between an initiating mail server and a receiving mail server. Thus, as shown in Figure 2 (with respect to firewall location B), the "electronic message management system (EMS)" of Petry is physically integrated with the receiving mail server 202. In that regard, Petry's EMS can monitor the receiving server's spooler. But note that Applicants are monitoring something entirely different: the health of the originating mail server. Petry has no way of monitoring the originating mail server – if the originating mail server's spooler is inoperative, the EMS will simply receive no mail from that mail server. Because the Petry EMS is not receiving any mail in such a circumstance, it has no way of monitoring or investigating the originating mail server's spooler: an inoperative originating mail server is simply non-existent as far as the Petry EMS is concerned. Instead, Petry is directed to a generic mail facility (electronic message management system (EMS)) that couples between mail servers – see, e.g., Figure 2, which shows Petry's mail facility 203 coupling between mail server 202 and the Internet. This mail facility does not service or the originating mail server's spool – instead, the mail facility 203 has its own spooler as discussed with regard to Col. 12. This is an important distinction because the claimed subject matter is directed to an intranet server that has no way of knowing whether e-mails have been delivered or not. Petry's server never monitors the spool in the originating mail server. Instead, the citation to Col. 19, line 60 – Col. 20, line 55 is a description of how the EMS manages its own spool, which is separate from the spools in the mail servers it sits between. The notification discussed in Col. 9, lines 30-35 and Col. 12, lines 47-56, and Col. 20, lines 26-28 is with respect to its own spool, not the spool in the originating mail server – thus Petry has no way of knowing whether this mail spools is non-functional – for

example, if the originating mail server's spool is non-functional, then Petry's EMS will never receive an email and thus has no way of knowing that the email was not delivered.

Applicant respectfully stresses this argument again: what the Petry "EMS" (element 203 in Figure 2) does is to analyze incoming emails. If an email is received, the Petry EMS analyzes to see if it is spam. Thus, as seen in paragraphs [0057] through [0064], based upon the analysis of the incoming email, Petry assigns some sort of "disposition instruction" such as "message accept" or "message reject."

As seen in Figure 3 of Petry, the Petry EMS system 300 sits between the sending email server 102a and receiving email server 102c. The roles of these servers could be reversed such that server 102c is the sender and server 102a is the receiver. But note the fundamental problem for Petry: Petry relies on processing incoming emails – for example, an incoming email would be one sent by server 102a and intercepted by EMS 300 in Figure 3. Alternatively, an incoming email would be one sent by server 102c and intercepted by EMS 300. Regardless of who is sending the email, Petry's EMS sits as a proxy for the intended recipient. Thus, as discussed in Petry's paragraph [0037], if one supposes the intended recipient has an email domain name of "joe@anywhere.com" then the EMS actually possesses the anywhere.com domain name. Of course, the Petry EMS must eventually forward the analyzed email (assuming it is not spam) to the intended recipient. If that intended recipient is not receiving emails, Petry spools the email for delivery later as discussed with regard to Figure 12.

But suppose an originating mail server is down: Petry's EMS thus receives no emails from that server. As far as Petry is concerned, that email server is alive and well but just not originating any emails: yet this is the exactly what the Applicant addresses: the health of the originating email server whereas Petry has no ability whatsoever for such monitoring.

In that regard, consider the office's March 17, 2009 "response to arguments:

Petry also discloses "*In accordance with conventional systems, the transmission direction of the email may also be reversed, where the sending machines and servers become the receiving machines and servers and vice versa.*" (col. 5: lines 9-12). Thus, if Petry can monitor the health of the receiving machine, it is obvious Petry can also monitor the health of the originating machine, since the roles of each machine may be reversed. Contrary to Applicant's assertion that "Petry's mail facility 203 coupling between mail server 202 and the Internet" only, Petry teaches "*Although this figure shows the EMS 203 as being physically adjacent to the mail server 202, such placement is only for illustration purposes. The EMS can be located anywhere on the Internet 101... Alternatively, the EMS 203 could possibly run on the same physical machine as the mail server 202.*" Thus, if the EMS 203 and mail server 202 run on the same physical machine, it is obvious both of the EMS 203 and mail server 202 will know whether the mail server's spool is non-functional, or that the email was not delivered.

But this response entirely misses the point: the EMS 203 will only know if mail server's 202 spool is non-functional based upon the processing of received emails. There is no monitoring whatsoever of an intranet server that sits between the mail server 202 and a corresponding intranet. This is made explicit in claim 1 and corresponds to Applicant's Figure 1: intranet web server 110 sits behind SMTP mail server 120. Intranet web server 110 is not a mail server but generates emails that are to be transmitted by mail server 120. As discussed at length in the specification, there is the problem of intranet web server 110 generating mail that sits undelivered – but if you integrate the Petry EMS into mail server 120 of Figure 1, that EMS has no way of knowing if the intranet web server's spooler is malfunctioning: the intranet web server will only spool emails if they are not getting delivered, and since they are not being delivered, then the Petry EMS has no way of receiving them. Thus, as was already argued nearly two years ago in this matter, the Petry reference can never monitor the health of a sender's email spool.

The sole thing that Petry can do is notice that emails it is sending are getting returned. Petry will thus spool the undelivered emails as discussed with regard to Figure 12.

Petry is only monitoring the spooler within the EMS

The August 13, 2010 office action commits clear error in asserting that Petry discloses act b of claim 1. Specifically, the office action states that Col. 19, line 60 through Col. 20, line 55 of Petry discloses that Petry can verify "normal operation of the email spooler" and "overall condition of the spooler." Although that is not quite correct, the key is that Petry is discussing operation of the EMS spooler: that is all the EMS can monitor since it is only analyzing incoming emails. Since the EMS sits as a proxy for the intended recipient, the EMS must eventually transmit the intercepted email to the actual addressee. Since the corresponding email server for the intended recipient may be down such that the email is returned, the EMS must spool the email in its own spooler. That spooler is completely separate from the originating email server and the destination email server. This is shown explicitly in Figure 4, where Petry shows the output to the spooler in Figure 12 from the "MPS" software process 426 within the EMS.

Regardless of whether Petry can spool its undelivered emails, that spooling has nothing whatsoever to do with the originating email server, let alone an intranet web server that is sitting behind the originating email server as required by the Applicant's claims.

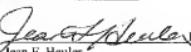
Because the additional cited prior art (Gupta/Shaw) does nothing to cure the above-discussed infirmities in Petry, the claims are in condition for allowance over the cited prior art.

If there are any questions regarding any aspect of the application, please call the undersigned at (949) 202-3000.

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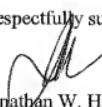
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